

Decision 02-01-020 January 9, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Utility Consumers' Action Network (UCAN),

Complainant,

vs.

Choctaw Communications, Inc. ( U-6008-C),  
d/b/a Smoke Signal Communications,

Defendant.

Case 00-04-039  
(Filed April 27, 2000)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

This decision awards Utility Consumers' Action Network (UCAN) \$7,699.04 in compensation for its contribution to Decision (D.) 01-04-038.

**1. Background**

UCAN filed this complaint alleging that Choctaw Communications, Inc. (Choctaw) violated its tariffed rates by not offering the following services:

1. Flat/Measured Rate Universal Lifeline Telephone Service (ULTS).
2. ULTS installation charge reduction.
3. Access to local directory assistance and timely access to directories.
4. Free access to 800 or 800-like toll free services.
5. One-time billing adjustment for charges incurred to directories.

6. Whether defendant offers access to telephone relay service as provided for in Pub. Util. Code § 2881.
7. Providing blocking of discretionary services.

UCAN and Choctaw submitted a settlement of the case on February 28, 2001. Both UCAN and Choctaw believed the settlement resolved all outstanding issues pertaining to the complaint. The Commission in D.01-04-038 approved the settlement agreement with two modifications. The first modification was a requirement for Choctaw to file an advice letter to offer measured rate service (MRS). The second modification was a requirement for Choctaw to pay a fine of \$5,000 for its failure to offer MRS as required by D.96-10-066.

UCAN timely filed its request for an award of compensation on May 24, 2001. Choctaw did not contest UCAN's request.

## **2. Intervenor Compensation Statute**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.<sup>1</sup> Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's<sup>2</sup> planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

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<sup>1</sup> Unless otherwise noted, all statutory citations are to the Public Utilities Code.

<sup>2</sup> To be eligible for compensation, an intervenor must be a "customer" as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation

*Footnote continued on next page*

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. Under § 1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

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arises directly from their interests as customers. (*See* D.88-12-034, D.92-04-051, and D.96-09-040.) In the text, we use “intervenor” and “customer” interchangeably.

### **3. NOI to Claim Compensation**

On December 26, 2000, UCAN timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding in a ruling issued by the assigned Administrative Law Judge (ALJ) dated January 25, 2001. The same ruling found that UCAN had demonstrated significant financial hardship.

### **4. Substantial Contribution to Resolution of Issues**

Under § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

The requirement that an intervenor's participation substantially assist the Commission in the making of its order is a tool the Commission applies in ensuring that compensated participation provides value to ratepayers. In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of the pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed.

In this proceeding, the record before us is limited since D.01-04-038 adopted a settlement. The use of alternatives to litigation, such as settlements, sometimes creates difficulties in determining a particular intervenor's

contribution to the proceeding.<sup>3</sup> Here, however, UCAN brought the underlying problem before us by filing a complaint with the Commission alleging, among other things, that Choctaw did not follow its tariffs rates for California Intrastate Telephone Service. Although Choctaw denied the allegations, Choctaw and UCAN began negotiations to resolve these alleged tariff violations.

The negotiations between Choctaw and UCAN resulted in the settlement agreement filed February 28, 2001. The negotiated settlement agreement required Choctaw to comply with its tariffs in all respects save the issue of providing MRS. For that service, the parties agreed to wait until resolution of R.98-09-005. In D.01-04-038, we opted not to wait for a decision in R.98-09-005. We ordered Choctaw to file an advice letter offering MRS.

We agree that UCAN made substantial contributions to D.01-04-038 in the areas it identifies. UCAN assisted the Commission by filing the complaint and negotiating a settlement agreement with Choctaw. The Commission adopted all aspects of the settlement agreement originally submitted by UCAN and Choctaw, except that we resolved the MRS issue differently and imposed a fine of \$5,000.

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<sup>3</sup> Section 1802(f) specifically identifies “alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission” as a “proceeding” for purposes of the intervenor compensation statute.

## 5. Reasonableness of Requested Compensation

UCAN requests an award of \$7,672.04. Corrected for minor arithmetic errors, that amount should be as follows:

Attorney Charles Carbone 20.3 hours @ \$100.00/hour	\$2,030.00
Attorney Michael Shames 27.4 hours @ \$195.00/hour	\$5,343.00
Miscellaneous Costs:	
Travel	\$252.00
Photocopies, FAX, Telephone, Postage	\$74.04
<b>Total Request</b>	<b>\$7,699.04</b>

UCAN documented the claimed hours by presenting a daily breakdown of hours for Carbone and Shames, with a brief description of each activity. The hourly breakdown presented by UCAN reasonably supports its claim for total hours.

Given the swift and satisfactory resolution of this proceeding and the avoidance of costly and protracted adjudication, we believe that the hours spent by UCAN in the settlement negotiation process was time well spent.

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (*See* D.98-04-059, *mimeo.*, at 31-33, and Finding of Fact 42.) In that decision we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits

of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

Even though we modified the settlement agreement with respect to the offering of MRS, we recognize that if UCAN had not brought that issue and the other six tariff violations to us and fashioned the solutions via the settlement agreement with Choctaw, the Commission would not have been able to rectify the tariff violations. We will award UCAN's full request. We weigh UCAN's cost of participation, \$7,699.04, against the fact that Choctaw's customers were denied the services in question since May 20, 2000 when Choctaw's tariffs became effective, and we find that UCAN's participation was productive and outweighed the cost of participation.

UCAN observes that the hourly rate of \$195 for attorney Shames is consistent with that approved by the Commission in D.96-09-065 and D.00-01-045. UCAN seeks no increase in his rates for work performed in 2000 or 2001.

UCAN is requesting a \$10/hour increase in the hourly rate of Carbone. As justification for the reasonableness of this increase, UCAN cites Pub. Util. Code § 1806, which instructs the Commission to take into consideration the market rates paid to persons of comparable training and experience. UCAN observes that during the pendency of this proceeding, Carbone passed the California Bar exam and is now a duly qualified attorney, licensed to practice in the State of California.

We find UCAN's requested hourly rates to be reasonable and consistent with our past treatment of attorney and expert fees for comparable work. Carbone's request for an increase in his hourly rate is reasonable because of his increased experience.

UCAN's requests a total of \$326.04 in miscellaneous costs, associated with travel (\$252), photocopying (\$38.60), telephone/teleconferencing (\$12.20), and postage (\$23.24). UCAN includes documentation of these costs in its request. These costs appear reasonable.

## **6. Award**

We award UCAN \$7,699.04, calculated as described above.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing August 7, 2001, (the 75<sup>th</sup> day after UCAN filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put UCAN on notice that the Commission staff may audit UCAN's records related to this award. Thus, UCAN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. UCAN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment regarding today's decision is being waived.

## **Findings of Fact**

1. UCAN has made a timely request for compensation for its contribution to D.01-04-038.
2. UCAN contributed substantially to D.01-04-038.



3. UCAN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

4. UCAN has requested an hourly rate for attorney Michael Shames that has already been approved by the Commission.

5. UCAN's request for an increase in the hourly rate for attorney Charles Carbone is reasonable in light of his training and experience.

6. The miscellaneous costs incurred by UCAN are reasonable.

### **Conclusions of Law**

1. UCAN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. UCAN should be awarded \$7,699.04 for its contribution to D.01-04-038.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that UCAN may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. Utility Consumers' Action Network (UCAN) is awarded \$7,699.04 in compensation for its substantial contribution to Decision 01-04-038.

2. Choctaw Communications, Inc. (Choctaw) shall pay UCAN \$7,699.04 within 30 days of the effective date of this order.

3. Choctaw shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical

Release G.13, with interest, beginning August 7, 2001, and continuing until full payment is made.

4. The comment period for this compensation decision is waived, and this proceeding is closed.

This order is effective today.

Dated January 9, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners